IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 150 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NANDLAL BARSAATIRAM - Orig. Accused - Appellant

Versus

STATE OF GUJARAT - Respondent

Appearance:

MR BS SUPEHIA for Appellant

MR MA BUKHARI, APP for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.R.VYAS

Date of decision: 04/09/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges the judgement and order dated 1st December 1995 of the learned Additional Sessions Judge, Kutch at Bhuj in sessions Case No. 39 of 1993 by which he was convicted for the offences under sections 302 and 394 of the Indian Penal Code and sentenced to imprisonment for life and a fine of Rs.1,000=00, in default to undergo simple imprisonment for a further period of one month.

2. The prosecution version is that, on 7th February 1993, the accused inflicted several dagger blows on Satish Bhumiramullu in the bushes of babul trees with a view to take away his gold chain and a sum of Rs.500=00 from him. The prosecution case is that though there was no eye witness to the incident, there was circumstantial evidence to show that the accused alone had committed the offence. The bill under which the gold chain was purchased and the shop owner from whom it was purchased, showed that Satish had purchased the same on 16-10-1988 from Shri Ram Krushna Jewellers, at Gandhidham. That chain weighed 11 grams and 550 milligrams. According to the prosecution, various persons had seen Satish wearing that chain. Even Satish's mother who was given to wear that chain for some time had identified the same. The bill of purchase of the chain from Shri Ram Krushna Jewellers was recovered from the suitcase of Satish which was lying in the room in which he was a tenant. According to the prosecution, on the previous evening of the incident, the accused had halted at the premises of Satish and in the morning of the incident, both of them had gone away together. The dagger with which Satish is said to have been killed by the accused was borrowed by the accused from Geetaben and it was returned to her at night on the same day after 9.00 p.m. According to the prosecution, the dagger which was recovered at the instance of the accused was found to be having human blood stains of blood group `B', which was the blood group of the deceased as per the report of the serologist & chemical analyser. The gold chain of Satish which was removed by the accused was sold by him to PW-8 Hasmukh Soni. The persons who accompanied the accused for selling the chain and the purchaser who have been examined, have proved that the said chain was sold by the accused on 8th February 1993 for a sum of Rs.3,900=00 to Hasmukh Soni. According to the prosecution, the clothes of the accused which were seized and were having blood stains were sent for chemical analysis and it was found that the blood marks thereon were of blood group `B', which was the blood group of the deceased. Similarly,

his shoe was also having the blood marks of the same group. The shop in which he had sold the gold chain and the place where he had returned the dagger, were shown by the accused and the gold chain as well as the dagger were recovered at his instance. According to the prosecution, a complete chain of circumstances was, therefore, established which proved that it was the accused alone and none else who had committed the murder of Satish.

3. The trial Court on the basis of the material on record came to a finding that the prosecution has established from the circumstantial evidence beyond any shadow of doubt that the accused had robbed the deceased of his gold chain and Rs.500=00 and committed his murder. The trial Court found that the medical evidence established that the injuries were possible by the muddamal dagger. It was established that the chain which was sold by the accused to Hasmukh Soni was the same which was purchased by Satish from Ram Krushna Jewellers. It was also held that the clothes and shoes of the accused and the muddamal dagger were all proved to be having blood stains of blood group `B', which was of the deceased. It was, therefore, held that the offences under section 302 and 394 of the IPC were proved against the accused and he was convicted for these offences. As observed in paragraph 86 of the judgement, since the sentence of life imprisonment was imposed for the offence under section 302 of the IPC, no separate sentence was imposed for the offence under section 394 of the IPC, for which also the maximum sentence prescribed was of life imprisonment.

5. The learned counsel appearing for the appellant submitted that the evidence of Geetaben to the effect that the police had come on the next day after the day on which the accused had returned the dagger in the evening at 9.00 p.m., and recovered the dagger, would show that the prosecution version was doubtful, because, as per the other evidence on record, the dagger was in fact recovered before the panchas from her house on 12th February 1993. As per the discovery panchnama, the police party had gone to the house of Geetaben at 12.00 p.m. on 12-2-1993. It was, therefore, argued that the recovery of the dagger from Geetaben's house was done as per the panchnama on 12-2-1993, while as per her version, it was recovered on the next day after the incident. This created doubt over the genuineness of the recovery of the dagger according to the learned counsel. His next argument was that the evidence regarding the gold chain having been purchased by Satish and that very chain having been robbed by the accused, was in the realm of

conjectures and there was no reliable evidence to prove that it was the same chain which Satish had purchased or that it was sold by the accused to Hasmukh Soni. It was also pointed out that, the weight of the chain was 11 grams and 550 milligrams as per the bill exh.26, whereas the chain which was recovered from Hasmukh Soni's shop was weighing 11 grams and 300 milligrams. This difference in weight was suggestive of the fact that it was some different chain which was sold to Hasmukh Soni and not the chain belonging to Satish. It was, therefore, submitted that connection of the accused with the crime was not established by the prosecution. Moreover, there were no identifying marks on the chain and as per the prosecution witnesses, such machine-made chains were available in many shops. The learned counsel therefore submitted that there was no sufficient circumstantial evidence to hold the accused guilty of the offences.

6. The learned Additional Public Prosecutor appearing for the State submitted that a complete chain of circumstances was established by the prosecution, as per which the accused and the deceased were last seen together since they had left the house of the deceased in the morning and on that very day, the dead body of Satish was found lying in the bushes with multiple wounds, which as per the medical evidence were possible by the muddamal dagger. It was submitted that both the purchase of the chain by Satish and sale by the accused of the same chain were established by cogent evidence on record. Moreover, as per the serologist's report, the muddamal dagger as well as the shoes and the clothes of the accused, which were sent for analysis, were found to be having blood marks of blood group `B' which was proved to be of the deceased. It was also submitted that, from Geetaben's evidence, it was established that the accused had taken the dagger from her house in the afternoon and returned it after 9.00 p.m. on the day of the incident. That dagger used to be given for marriage ceremonies, as per the version of Geetaben. The learned counsel relying upon the decision of the Supreme Court in Ashok Kumar v. State of Andhra Pradesh, reported in AIR 1989 SC 1890 submitted that all the tests indicated by the Supreme Court as regards the circumstantial evidence were established in this case. It was held by the Supreme Court that, when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:-

[1] the circumstances from which an inference of guilt is sought to be drawn, must be

cogently and firmly established.

[2] those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused.

[3] the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and

[4] the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation on any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

7. As per the Charge exh.1, it was alleged that the accused, with a view to commit robbery of the gold chain and the amount of Rs.500=00, took Satish in the bushes of babul trees near Ganeshnagar area where there was waste land and inflicted eleven blows on him with a dagger and intentionally caused death of Satish and took away the gold chain and Rs.500=00 from him, thereby committing offences under sections 302 and 394 of the IPC.

8. It has come in evidence that the deceased was residing in rented premises belonging to the prosecution witness Yashudas who in his deposition exh.74 has stated that Satish was a tenant in one of his rooms. David Ramarao, Anand Ramarao and others were also tenants in other rooms. Satish was a tenant since about three years. He was doing tailoring work and belonged to Andhra Pradesh. A day prior to the day when Satish was murdered, the accused had come between 3.00 and 4.00 p.m. at his house and inquired about Satish. He told him that Satish had gone for work and would return at about 8.00 or 9.00 p.m. Thereafter, at about 9.00 p.m., the accused and Satish had come together in the room of Satish where the accused had stayed at night. In the morning, both of them had gone out. He came to know on the next day from the newspaper that Satish was killed. He had seen the dead body of Satish thereafter. Satyanarayan and David had also gone to the hospital alongwith him. Thereafter, the accused was arrested. He identified the accused as the same person who had stayed overnight in Satish's room

and who had gone away with Satish in the morning. He has denied a suggestion in the cross-examination that the gold chain and watch were recovered from the room by the police. According to him, the sewing machine, clothes, photographs etc. which were recovered from the room by the police, were handed over to the parents of Satish. He has said that Satish used to wear the gold chain. He has identified the muddamal gold chain as the same chain which was worn by Satish. In the cross-examination, he has asserted that he had seen Satish wearing the said gold chain everyday. He used to meet Satish every morning. The wrist-watch which was shown to him was also the same which was worn by Satish. From the deposition of this witness, it clearly transpires that the accused had stayed overnight with Satish in the room, which was let out to Satish by this witness. Earlier he had come to inquire about Satish in the afternoon and had returned with Satish in the evening at about 8.00 or 9.00 p.m. This witness had therefore ample opportunity to see the accused who had stayed in the room which was let out by him to Satish. From his evidence, it also transpires that, in the morning, both Satish as well as the accused had gone away from the house. Therefore, they were last seen together as per the deposition of this witness. It also transpires from his deposition that the muddamal gold chain was worn by Satish everyday.

8. The bill under which Satish had purchased the muddamal gold chain is at exh.26 (muddamal article - 20). Prosecution witness Ramesh Mohanlal Patadiya in his deposition exh.25 has stated that he runs a jewellers shop in the name of Shri Ram Krushna Jewellers. The cash-memo muddamal article - 20 was issued by the shop owner on 16-10-1988. It was a cash-memo showing that a gold chain weighing 11 grams and 550 milligrams was sold under it on 16-10-1988 to Satish who belonged to Andhra Pradesh as written therein. He has proved the handwritings and contents of the cash-memo which is at exh.26. He has stated that the weight of the gold ornaments will reduce by use i.e. by wear and tear. In the cross-examination, he has stated that the extent of wear and tear of a gold ornament would depend upon the extent of its use. From the deposition of this witness and the cash-memo exh.26 (article 20), it is established beyond doubt that the muddamal gold chain was purchased by Satish from his shop on 16-10-1988. Then there are other witnesses who have seen Satish wearing the same gold chain. As noted above, Yashudas, landlord of Satish had seen him wearing the said gold chain. His mother Narsamma who has deposed at exh.70 has also identified the said gold chain as the same which was purchased by

her son. When Satish had gone to his native place, he had given the said chain to his mother for wearing it. Thereafter, when he again came, he took away the chain and its bill. It is therefore but natural that she was in a position to identify the gold chain as the same chain which was purchased by Satish under the bill exh.26, though, of course, she was not able to identify the writings of the cash-memo exh.26 as she did not know Gujarati and was a Telugu speaking lady.

9. Witness Abdul Rahim exh.9 has stated that he is a tailor and had known Satish who used to do tailoring work in his shop. He had given his dues to Salim. At that time, the accused had come with him. He has said that when Salim used to work in his shop, he used to wear the muddamal chain. The prosecution has therefore satisfactorily established that the muddamal chain which was purchased by Satish under cash-memo article 20 (exh.26) was seen on him by several witnesses. He was wearing the chain and obviously therefore there was minor reduction in the weight of the chain as originally it was weighing 11 grams and 550 milligrams on 16-10-1988 when purchased, and when recovered from the shop which was shown by the accused, its weight had marginally reduced to 11 grams and 300 milligrams i.e. by 250 milligrams only. Such wear and tear was natural when the chain was worn for nearly five years by Satish. Therefore, the contention that the marginal difference in the weight of the chain would show that it was not the same which was purchased by Satish is erroneous and cannot be accepted.

10. The prosecution has been able to establish by leading cogent evidence that this very chain was sold by the accused to Hasmukh Soni who in his deposition exh.15 has stated that, on 8-2-1993 at about 4.30 p.m. while he was at his shop, Jayesh who was a tailor and one muslim person had come with the accused to his shop. This witness had acquaintance with Jayesh. The accused was having a gold chain. Jayesh asked this witness whether he would purchase that gold chain. This witness told Jayesh that he did not purchase goods if there was no valid bill for the same. The accused was not having a bill and had said that he had left it at his native place. This witness therefore initially refused to buy the chain. The accused therefore started making entreaties saying that he had to pay the lodging charges and was in a difficulty. This witness told him that he would give the amount if he had a bill. The accused said that he would get the bill within four or five days. Thereupon, this witness weighed the gold chain which was of 11 grams and 300 milligrams and gave him Rs.3,090=00.

He identified the accused as the person who had sold the gold chain shown to him. He also identified the muddamal gold chain as the same chain which was sold to him by the accused. In his cross-examination, he admitted that similar machine-made gold chains were available elsewhere also, but has stated that he knew that this is the same gold chain which was given by the accused to him, because, he remembered that the accused had given it to him. The gold chain was recovered from him by the police on 11th February 1993. From the deposition of this witness, it clearly transpires that the accused had sold this muddamal gold chain for a sum of Rs.3,090=00 on 8th February 1993.

10.1 PW-7 Jayesh Ratilal Darji in his deposition exh.12 has fully supported the version of Hasmukh Soni and has stated that Aziz had brought the accused to him at about 3 O'clock on 8th February 1993 and told him that he was in need of money and wanted to sell his gold chain. He therefore took him to Hasmukh Soni and told him that the accused wanted to sell his gold chain. On being asked about the bill, the accused had said that the bill was lying with his father at Kolkatta. Thereafter, Hasmukh Soni had taken the chain and had given Rs.3,090=00 to the accused. He has said that the gold chain was directly given by the accused to Hasmukh Soni.

10.2 PW-3 Aziz Hasan Luhar in his deposition exh.8 has also stated that the accused had told him that he wanted to sell the chain. He had known the accused and Jayesh, because, they were serving together. The accused had expressed that he wanted to sell the chain and had asked for money from this witness, but he told him that he did not have money. Thereafter, he had taken him to Jayesh where the accused said that he wanted to pay his lodging charges and therefore, was in need of money. Jayesh told him that he would take him to a goldsmith, but he would not buy the chain without its purchase bill. Thereafter, they went to the jeweller who initially refused to purchase the chain without the bill. However, when the accused made entreaties and was on the verge of crying and said that he was in a dire need of money, the goldsmith took pity on him and took the gold chain for about Rs.3,000=00. This witness identified the muddamal gold chain as the same chain which was sold by the accused to the goldsmith. He has identified the accused as the person who had sold the gold chain to the goldsmith.

10.3 Thus, from the depositions of Hasmukh Soni, Jayesh and Aziz, the prosecution has been able to prove

beyond any shadow of doubt that the gold chain which was of Satish and which was purchased by him under the cash-memo dated 16-10-1988 exh.26 and worn by him, was sold by the accused on 8-2-1993 to Hasmukh Soni for a sum of Rs.3,090=00.

11. It was the accused who had shown the shop where the chain was sold by him and this is proved from the deposition of the panch witnesses Ibrahim and Laxman at exh. 33 and exh.34 respectively and the panchnama exh.35. As recorded in the panchnama exh.35, the accused had led the panchas to the shop of Hasmukh Soni. When the accused pointed out Hasmukh Soni as the person to whom he had sold the chain, Hasmukh had opened the safe which was in the shop and taken out the gold chain. Hasmukh Soni had said that the accused had come alongwith Jayesh and one other person and sold the chain to him. The gold chain was seized under the said panchnama from the shop of Hasmukh Soni. Thus, the circumstance that it was at the instance of the accused that the gold chain was recovered from the shop of Hasmukh Soni, coupled with the direct evidence of Hasmukh Soni, Jayesh and Aziz about selling of the said gold chain by the accused to Hasmukh Soni for a sum of Rs.3,090=00 on 8-2-1993, goes to establish beyond any shadow of doubt that it was the accused who had sold this gold chain to Hasmukh on 8-2-1993. This circumstance clearly connects the accused with the crime, because, there is no explanation forthcoming from the accused as to how this gold chain was acquired by him, when it was purchased by Satish who was using it and when the cash-memo in respect of this very gold chain was still in the custody of Satish from whose suitcase it was recovered by the police. The accused beyond flatly denying the facts which have been cogently established, has said nothing.

12. The muddamal dagger with which the offence is alleged to have been committed was a dagger which used to be given for use in marriage ceremonies by Geetaben who, in her deposition exh.7, has stated that this dagger was taken by the accused from her and returned on the same day at night at about 9.00 p.m. She has said that, after the muddamal article 17 dagger was returned to her, it remained in the same condition till it was taken away by the police. She has stated that the police had come on the next day and taken away the dagger from her place. Much argument was canvassed on this aspect and the learned counsel submitted that, if as per the deposition of this witness, the dagger was collected on the next day after it was returned in the evening at 9.00 p.m. by the accused, the prosecution version was falsified, because,

as per the panchnama and the deposition of the prosecution witnesses, the dagger was recovered from the house of Geetaben on 12-2-1993. The recovery of dagger from the house of Geetaben was done under the panchnama exh.37. The accused had led the panchas to the house of Geetaben and at his instance, she had brought out the dagger which was seized under the panchnama exh.37. This panchnama was recorded between 10.00 and 11.15 a.m. on 12-2-1993. It is proved from the deposition exh.36 of the panch witness Pravin that the accused had led the panchas to the house of Geetaben for recovery of the dagger and at the instance of the accused, she had brought out the dagger from the house. She identified the dagger as the same dagger which was recovered under the said panchnama. Therefore, when the documentary and oral evidence clearly shows that the dagger was seized from Geetaben's house on 12-2-1993, Geetaben is making an obvious error when she states that it was recovered by the police from her on the day next to the day on which it was taken and given back by the accused. The incident took place on 7-12-1993. Therefore, if by mistake in remembering the day on which the dagger was recovered from Geetaben at the instance of the accused when she has said in her deposition that it was recovered on the next day after it was returned by the accused, it cannot be inferred that the prosecution version was doubtful as argued by the learned counsel for the accused. The said dagger was sent for analysis of the blood stains which were found thereon and as per the report of the chemical analyser and serologist, which is at exh.87, the blood stains which were found thereon were of human origin and the blood group was `B' which was the group of the blood of the deceased.

13. Under the panchnama exh.43 read with the deposition of the panch witness Radha Mohan and Hardayal Tiwari at exh.42 and exh.44 respectively, the accused had produced the clothes and the shoes which were worn by him at the time of the incident and as per the chemical analyser's report exh.87, the blood stains which were found on these articles were of human origin and the blood group was `B' which was of the deceased. This circumstance also fits in with the other circumstances showing the complicity of the accused.

13.1 The medical evidence clearly shows that the accused had given the history to the doctor as regards the injuries which were found on him to the effect that Satish had bitten him. Dr. Chandrakant Acharya in his deposition exh.16 has stated that he had examined the accused on 11-2-1993 at 1.15 p.m. and the accused told

him that a person named Santosh had given him a bite on 7-2-1993 at 9.00 p.m. in Ganeshnagar area. The injuries on the accused showed the teeth marks as described in his deposition by the doctor and as mentioned in the injury certificate exh.19 issued by him. Thus, on the admission of the accused himself before the doctor, Santosh was with him around 9.00 p.m. on 7-2-1993 and had given him a bite. The dead body of Santosh was detected lying in the bushes near the Ganeshnagar area on 8-2-1993 at abut 5.45 p.m. as per the evidence of the investigating officer and the inquest was done at about 6.00 p.m. As per the medical evidence, the post-mortem was started in the morning at 9.00 a.m. on 9-2-1993. All the injuries were ante mortem and death occurred 24 to 36 hours before the post-mortem was started, as per the medical evidence. This tallies with the prosecution version that Santosh was murdered by the accused on 7-2-1993 and the admission made by the accused that Santosh had bitten him around 9.00 p.m. on 7-2-1993. This is a clinching part of the evidence which clearly establishes the complicity of the accused.

14. It is evident from the above circumstantial evidence that the prosecution has beyond any reasonable doubt established; that the accused had stayed over night with the deceased and in the morning they had gone together from the house; that the accused had borrowed the muddamal dagger from Geetaben, that the dagger was having blood stains of the blood group of the deceased which was `B' and this dagger was discovered at the instance of the accused; that the gold chain of Satish was taken away by the accused who had sold it to Hasmukh Soni on 8-2-1993; that the clothes and shoes which were worn by the accused at the time of the incident were having blood stains of the blood group `B' which was of the deceased. The ghastly manner in which the murder was committed is evident from the deposition of Dr. Chandrakant Acharya, PW-9, exh.16, post-mortem notes exh.17 and injury certificate exh.18. As per the medical evidence, the injuries which were found on the body of the deceased were possible by the muddamal dagger. In our opinion, this is a classic case of circumstantial evidence where the entire chain of circumstances has been established by the prosecution to prove the guilt of the accused, leaving absolutely no room for any doubt.

15. We are, therefore, fully satisfied that it was the accused alone who had committed the offence under sections 302 and 394 of the Indian Penal Code. We find ourselves in full agreement with the reasoning and

findings of the trial Court holding the accused guilty of these offences. The appeal is, therefore, dismissed.

SEPTEMBER 04, 2001 [R.K.ABICHANDANI, J.]

[K.R.VYAS, J.]

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